

LIBERAL THOUGHTS

ON THE PRESENT

Dilapidation of Church-Houses ;

OR, AN

EQUITABLE SCHEME

For its PREVENTION.

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Junior CANON of WELLS.

Ne quid falsi dicere audeat, ne quid veri non audeat.

CICERO.

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PREMONITION.

THE writer of the following tract hereby requests the favour of his candid reader, not to misconstrue the free or ingenuous assertions therein contained, relative to the most notoriously partial bias of lay juries towards their own fraternity, in almost all issues of church rights at common law.

In general, the author entertains the very highest opinion of such a secure mode of trial; and his sole objection to it, in cases of this particular nature, is, that the verdict is not found or given per

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medietatem of ecclesiastics and laymen. Here we cannot, in any proper sense, be said to be judged per pares, but rather per impares, there being so generally acknowledged a triationis defectus ^{et} prejudicium.



LIBERAL

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ON THE PRESENT

Dilapidation of Church-Houses.

S E C T. I.

THE affair of dilapidations having now become, by long and *unaccountable* neglect, an engine of the most insupportable *oppression* to a great number of the clergy, I flatter myself, that, in giving so *vexatious* a subject a very minute or particular consideration, I may prove the beneficial instrument of exciting an attention in our legislature towards prescribing the most effectual remedy for a grievance so generally complained of and lamented. That the wisdom of parliament will sooner or later interfere on our behalf, and assist the established church in her distress as to

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this point, we have good ground to hope, from their known candour and enlarged contemplations. But, why do I say hope only? For when a person reflects deliberately on what great things the present *honest* administration hath of late done for us, by rejecting, with a becoming contempt, the *maliciously* projected repeal of our Nullum Tempus law, we should seem to have already received a sure pledge, or omen, of their future favour and protection, upon any *similar* emergency arising hereafter.

In the following tract, therefore, I shall endeavour, first, to state the present *penal* law of England relative to this great point, with clearness and precision. Secondly, it shall be my business to give a *short* sketch and summary of the *remunerative* or *bounty* acts now in force in Ireland.

And, thirdly, I shall beg leave, with all due deference, to submit to the candour of the public my own scheme for *prevention* of dilapidations, different from either of the former provisions to that purpose.

Now, there being *two* remedies already existing for the cure of so great an evil, the
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one given by our *temporal* courts, the other by our *ecclesiastical*, a short question arises, at first view, which of these succours will, in practice, prove the most salutary or effectual? By the *general* custom of this realm, any succeeding incumbent may maintain, at common law, his special action upon the case, for waste, against his predecessor, if living, or his representatives, if he should be dead. In case such a mode or method of redress is pursued, a *jury* of twelve *lay* men become *estimators* of the particular *quantum* of damages done or sustained; and, upon this occasion, I am apt to conjecture, that a prejudice in their breasts will naturally arise towards the plaintiff, however just and well founded his claim may appear, to a *discerning* and *impartial* judge.

The *concealed* or *private* speculations of these *provident* gentlemen will probably run thus:—In case this reverend divine is so very *rigorous* in his demands upon a brother-clergyman, or his helpless destitute widow and orphans, what bowels of mercy or consideration can we possibly

expect from so *ravenous* a priest, when he comes to settle the other sacred right of tythes with his flock? Surely it highly importeth us and our own honour to nip in the bud such a furious spirit of usurpation and encroachment, either by not finding any verdict at all for him, if the injury is but moderate; or, in case it is gross and excessive, by giving a vastly *inadequate* satisfaction.

Such, we may reasonably presume, will be the common or usual success of submitting a question of so *invidious* an aspect to the *mercenary* conscience of *narrow-minded* jurors, who generally, in all suits, of either the crown or the church, frame their several resolutions upon the destructive principles of party and faction.

Let us, therefore, turn our eyes towards another tribunal of a far more benign influence in such matters, a spiritual court.

Dilapidation being a concern or business *merely ecclesiastical*, should most naturally be brought in judgment within its own *proper forum*; for, in this particular case,
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not the smallest pretext, colour, or handle can be discovered, which can furnish out a *suggestion* for the purpose of obtaining a *prohibition* from the king's bench. Bishop Gibson, in his Codex, tells us, that the *sole* cognizance of dilapidations is so much the acknowledged right of the *spiritual* court, as to have a writ of consultation provided in the register, for its security in the due exercise of holding pleas of such a nature; and, no doubt, for very wise and sufficient reasons, the legislature has left this sort or species of judicial power in the hands of the church, uncontrouled and uncircumscribed. By this indulgence, every ordinary, superior or inferior, becomes fully vested with an ample capacity of redressing any complaints of his clergy upon this head; and, as it should seem, may proceed, after *monition*, ex officio, even to sequestration of profits for *necessary* amendments or reparations.

Here we meet with a judge of our *own* order, who is firmly bound by every tye of duty, and most probably of inclination, to hear and determine causes of such a stamp,
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in the genuine spirit of distributive justice, tempered with equity, moderation, and candour; all which ingredients of an upright magistrate his education and profession demand, or rather most religiously promise to the world. To which remark it may be most truly answered, that all these several valuable qualities will be as certainly found in the president of a common-law court at nisi prius, as in the sanctified moderator of a consistory. But then, please to mark an *essential* difference betwixt the two cases. In the former mode of seeking redress, a *jury* of twelve *lay* men must of course assess or estimate the *quantum* of damages sustained by the plaintiff, whilst, in the latter, the ordinary is left at large to his own reasonable discretion, as to the grand point of settling the just *measure* of satisfaction by an exact rule of *proportion*. I do not mean here to intimate, that a spiritual judge is licensed to determine such a matter *without* or *against* legal evidence; but my suggestion is simply this, and nothing more, that he does not appear so unfortunately *circumscribed* or *limited* in his
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operations as a venerable sage of Westminster-hall unquestionably is, in a trial by the *country*. In a case of this sort, the depositions of the witnesses produced by the contending parties are, most usually, widely different. Perhaps, the estimate of dilapidations vouched by those called in on the side of the complainant may prove *treble* to what is acknowledged or confessed by the *two* persons called in on that of the defendant. Put the case, that three hundred pounds are charged or demanded, and one hundred only offered or tendered, as a recompence for the ruins of any particular house, barns, out-houses, and stables. Here the spiritual judge can weigh maturely in his own breast the various degrees of *credibility* arising from the *manner* or *circumstances* of the attestations of the several facts alledged by both parties.

Now, thus a wide field is opened for the exertion of sagacity or penetration by the ordinary; and the result of his deliberation, in instances of such a nature, I presume, would be---not to give any kind of credit to, but to disbelieve in general, assertions

assertions or testimonies of so different and contradictory an import ; the necessary consequence of which *incredulity* must be, that he will be forced to strike the balance between the two litigants, and compel them to meet each other half way, by *mutual concession* or *compliance*. According to my former example of three hundred pounds and one hundred pounds, let the complainant be decreed to give up one hundred pounds, and the defendant to advance farther one hundred pounds; and the medium is two hundred pounds; the consequence of which direction or order will be, that the party injured will most probably receive a reasonable, though not rigorous or excessive recompence; for *depositions*, in almost all such cases of dilapidation, are too commonly dictated, uttered, and maintained by a spirit either of partiality or of prejudice.

This sort of witnesses seldom or never remain, as they ought in duty, unbiassed or uninfluenced either by favour or dislike. Now, if our English spiritual court can, with the least degree of propriety, support

that high or lofty title of *Curia Christianitatis*, which has been, for ages past, bestowed upon it; then sentences of such a justly reconciling *moderation* will reflect the most signal honour upon its judge. *Liberal equity* should certainly be always found the very life or soul which actuates every proceeding or rule of practice at the bar of this *religious* tribunal.

S E C T. II.

BUT next, in order to obtain a still more sure and superior guide than the common law, as to the safest and most effectual method of prosecuting or asserting a church right of this nature, let us have recourse to a close review of the *first part* of our golden statute of 13 Eliz. c. x. The grand, or rather *sole* object of this most beneficial act is the good or interest of ecclesiastical *successors*. The bill under consideration plainly refers or sends us to our *own* forum for redress of the grievances of dilapidation. In the very preamble, we meet with a

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strong *implication* to this effect; and, in the first enacting clause, this said hint or innuendo becomes enlarged or interpreted into the most clear, express, or determinate direction. The words in the former passage are, " Might and should have had by " the laws ecclesiastical of this realm ;" and in the latter they run thus, " Shall " and may commence suit, and have such " remedy in any *court ecclesiastical* of this " realm."

Now, here I do not mean to assert, that these plain and strong expressions ought to be received in the way of strict *limitation*, so as to *exclude* the jurisdiction of Westminster-hall. My sole drift is to shew that a spiritual court seems the most regular and best calculated for the *impartial* hearing of such causes, since this salutary statute of queen Elizabeth affords us a positive *direction* to that very effect or purpose. And the case of Jones and Hill, in Viner, clearly proves, that the most learned judges of the common law have been much divided, or quite wavering in their opinions, whether a special action upon the case, in
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their temporal court, is, in very strictness of jurisdiction, maintainable.

With respect to the *extent* of this act, I beg leave to introduce an observation peculiarly my *own*. Some writers, of the first eminence, have, repeatedly, laid it down as settled law, that this said statute of 13 Eliz. c. x. does no way, in the least degree, affect or touch *bishops*; but, on the contrary, that this highest order of churchmen are left entirely to the *sole* guidance of their own *private* bill, of 1 Eliz. c. xix. as to the important point of *restraint* or *disability*. Now, with all due deference to such high authorities, I most humbly conceive, that, *ex parte*, tho' not *in toto*, our *public* act of 13 Eliz. c. x. comprehends or takes in *prelates*, no less than all *inferior* ecclesiastics. Dilapidation being a *genus*, the preamble and first enacting clause wholly confine themselves to *one* single species of it, viz. waste and destruction of houses, either *permissive* or *actual*. Palaces, we may readily observe, stand foremost in the list of buildings, according to natural priority, on account of their superior grandeur, and

to whom these said palaces should belong, or refer us, other than bishops, would be difficult to determine. However, to put the matter past all possibility of doubt, touching who should be reputed the proprietors or owners of these splendid habitations, the very next section describes or sets them out, *nominatim*, by their own peculiar titles of highest dignity, *archbishops* and *bishops*. It may not be amiss in this place to remark, that the present wise law was enacted upon the spur of *two* particular occasions or causes, viz. *fraudulent* alienations, and *long* or *unreasonable* leases and grants; and, indeed, wholly confines its views to the future removal of these *two* most intolerable grievances. With respect to the *former*, the statute lays its grand stress of complaint against incumbents, upon their *knaveish* contrivance or stratagem of conveying goods and chattels to persons *in trust*, for the *secret use* of their executors or administrators, to the intent and of purpose, after their deaths, to defeat their *successors* of a legal remedy; but then, at the same time, the words of this act most

clearly intimate to us, that, *prior* to the date thereof, the spiritual court was vested with a proper jurisdiction, for receiving and determining all causes, grounded in dilapidation. For, if a *new* or *supplemental* remedy is here prescribed, against even any mere *concealed accomplice* or *accessary*, in such sacrilegious *robbery*, a fortiori, the former *original* law of the church was, at least, equally severe against the direct *open* transgressor, who now, by this *late* device of dark or clandestine alienation, began to be looked upon as his *principal*. Omne majus continet in se minus. If the simple *alienée* could not remain unquestioned, by virtue of such strong *affirmance* of our old ecclesiastical canons, much less could the dilapidator himself, *antecedently* to 13 Eliz. c. x. ever have been screened from prosecution, in his *own* proper person and forum. By *affirmance* I here mean something more than declaration or explanation only. It is my conjecture, that this most seasonable provision of the legislature was kindly intended, by the then ruling powers, not merely to notify to the kingdom
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their sense or judgment, and detestation of all these pious frauds, but farther, at the same time, collaterally to establish, strengthen, and place upon a surer foundation, if possible, than *before*, the *reasonable* jurisdiction of our spiritual courts. This *first part* of the statute takes in or regards only a single *anomalous* or *eccentric case* of particular *nicety*, namely, that of *colourable* alienations in *trust*, for the *secret benefit* of another. P. the predecessor most dexterously plotting to cheat or defraud S. the *successor*, after his own decease, in the very spirit of genuine piety, persuades T.† to become trustee, for the unjust emolument of A. the fourth person, who, *bonâ fide*, behind the scene is, at length, discovered to be his *real* administrator. Upon every such detection, an immediate operation of law transfers the said *fraudulent use* into *possession*, and charges the abettor of this knavery with the whole guilt of such a dark transaction. Which step was certainly taken upon good grounds, for, supposing all persons to be deterred from becoming *assistants* in such schemes of iniquity,

quity, the practice is at an end. *Solus cum solo* cannot possibly play this scene of finesse; *duplicity*, arrant or downright *duplicity* is its most striking essential. The light in which I view this whole business of the covin, alluded to in the preamble, is as follows. Divers and sundry ecclesiastics having of *late* years, (by which phrase I understand the two reigns of Hen. VIII. Edw. VI. and the past part of Q. Elizabeth's reign, to be peculiarly marked out) in the *shameful* manner just described, made fraudulent deeds of gift to the gross injury, as they *then* hoped, of their successors; a most ingenious quibble or doubt, I guess, had been started, more than once, by shrewd advocates, Whether, by *regular practice*, such successors, upon discovery of the fraud, could commence their suit immediately against these pretended or colourable alienées of their *worthy* predecessors? Which frivolous demur appears in my eye somewhat similar to that of certain profound judges in a former age, who, with singular gravity, scrupled to pronounce sentence against a stealer of several *horses*, because the statute

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upon which the culprit was convicted spoke merely of *a horse*, in the *singular* number only. But, qui hæret in literâ, hæret in cortice. To cure, therefore, and effectually obviate such a pitiful or pedantic *narrowness* of construction, in cases of apparent fraud respecting dilapidations, was one grand object of the 13 Eliz. c. x. This act, we see, was intended to infuse a soul or spirit of *intelligence* into *dull heavy practice*, and make it follow or pursue the very equitable *design* or *scope* of the legislature, a timely redress or relief for *successors*, against the most artful oppression of their predecessors. Now here it may naturally enough be asked, by curious enquirers, what particular motives or considerations should induce *pious ecclesiastics*, during the period of our English reformation, to be guilty of such mean or scandalous *shuffling*, *more* than in any other age? The ready answer to which question, I guess, is, that those new made *Protestant*, or rather *Popish* priests, observing, with holy jealousy, at what a seemly rate the *lay cormorants* were then devouring sacred things,

things, determined within themselves to come in for some small broken fragments of such delicious fare. And, in truth, a most notable struggle soon ensued; which of these two contending orders should entail the greatest or most durable mischief upon our established church.

S E C T III.

My general objection to the foregoing penal law of England.

NOW, at first sight, this sort of provision, however beneficial in a considerable degree, to spiritual *successors*, still wants vast *addition* or *improvement*. My leading objection to the same lies in a very narrow compass, namely, because it is merely *penal*. This single circumstance, instantly and at once, manifests or plainly bespeaks its great deficiency or *imperfection*. Many laws visibly hold forth, or promise to their obedient subjects, *reward*, as well as punishment, *sua præmia laudi*; and, in
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general, perhaps the former sanction will be found, by experience, to operate no less powerfully than the latter. Certainly, it is a far more pleasing task likewise, to the manly spirit of legislation, to endeavour rather to allure, invite, or persuade a rational species, by encouragement or liberality, than to terrify, scare, or confound them, by huge threats or menaces. Of the two contrary extremes, it is infinitely more eligible to every ingenuous mind to be loved rather than to be feared. However, at the same time it must be confessed, that it undoubtedly appears most consonant to the superior genius of authority, to carry a suitable share of terror, especially if we do but reflect one moment upon the lamentable depravity or unfairness of the common herd of mankind. And, in the happy or due mixture and proportion of these two most useful qualities, or passions, love and fear, I presume the chief art of government consists.

I could readily add several other objections of less significancy and comprehension, but must now hasten to speak, accord-

ing to the best information I have yet received of the *preventive* scheme against dilapidations in Ireland. Indeed, the few remarks I have already made, upon the point of *mere penalty*, appear abundantly sufficient to shew the miserable want of that *better half, reward*, in our present law of England. With some small degree of difficulty, I have procured extracts of all the most *material* or *essential* parts of *four* acts of parliament, relative to dilapidations, which are now in force throughout the whole kingdom of Ireland.

The first original bill of 10 Will. III. by way of powerful encouragement, gives to any builder, repairer, or purchaser of a church-house, *two-thirds* of the particular sum by him expended, but inadvertently fixes no sort of limit or bound as to the greatness or smallness of expence.

Next comes a supplemental act of 12 Geo. I. correcting such oversight, which restrains superlapidation, or excess of building. It directs and orders, that never *more* than *two* years clear income shall be laid out by any incumbent; by which re-

straint, no successor, we see, can become chargeable with any larger sum than one year and a half. And, as a farther or additional spur to making improvements upon glebe or mensal lands, this beneficial bill gives *three-fourths* of the said *two* years clear income back again to the expender, upon his removal to another preferment, and, in case of his decease, to his representative. The whole amount of this scheme, in miniature, is, that *four persons*, A, B, C, and D pay their respective quota of half a year's clear income.

Some years after, we meet with another remedial act of 9 Geo. II. upon the same subject, which breathes the genuine spirit of humanity. It states or recites the very great hardship, difficulty, or distress which must naturally or unavoidably happen to *many* families, in such cases where particular incumbents shall chance to die in a *short time* after their having obtained their preferment; and yet, notwithstanding the said unfortunate decease, their *poor* representatives shall still stand liable to pay the full *fourth part* or share of the money laid out

out by any predecessor. In *tender* consideration, therefore, of *widows* and *orphans* being frequently exposed hereafter to these *cruel* circumstances, without a suitable provision made on their behalf, the legislature kindly enacts, that no person whatever, promoted to any sort of benefice, shall be deemed a *successor* within the meaning of this or the former bills, chargeable with his respective proportional payment, unless he shall remain or continue incumbent *one* whole or complete year. The same salutary rule applies itself likewise to the other case of translation or removal. The first person who remains in possession so long as to receive a year's profits of any bishoprick, dignity, or benefice, is to be reputed a real and legal successor ; but no other imaginary one, who continues for ever so little shorter space of time than this definite period, shall become liable to the least incumbrance on account of his advancement, except *annual, necessary, or unavoidable* repairs. Immediately upon the full expiration of this *whole* year, the new incumbent is bound to pay over one *moiety* of the

the three-fourths, two-fourths, or one-fourth of any original sum or capital formerly expended, to his predecessor or his representative quoad the personalty; and the other remaining *moiety* must be delivered over to the proper claimant, by two equal half-yearly payments, within the next year.

Lastly, comes a third supplemental act of 17 Geo. II. which enlarges the discretionary power of the chief governor of Ireland, archbishop, or bishop, as to their grants of *certificates* for repairs *heretofore* and *already* made, notwithstanding these past improvers alluded to had neglected to deliver in, *previous* to their beginning their said improvements, a written account of their several proposed buildings or alterations respectively, according to the proper directions prescribed in or by 12 Geo. I. for that purpose. This said third remedial bill likewise contents itself with only a fortnight's *prior* notice being given to any particular certifier; and adds farther, that a *general* account or plan of the proposed building or alterations, without the minutiae, shall be sufficient.

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S E C T. IV.

*My objections to the now-recited Irish
bounty scheme of lives.*

MY first or leading objection to this otherwise useful plan is, that it gives or returns to the original builder, repairer, or purchaser of any particular house erected or made convenient for the residence of any succeeding incumbent, *no more than, or only three-fourths* of his capital expended for the very signal advantage, profit, or emolument of all posterity: whereas, in point of *equity* or *natural justice*, it should seem reasonable that every benefactor to the church in this desirable method should, either in his own person, or that of his representative, receive back again the *whole* or utmost shilling of the said capital. A second is, that *one* complete year's possession constitutes an incumbency; when, at the same time, perhaps, or rather certainly, *double* this *short* period would prove, in practice, much more beneficial. I mean,
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that no dignitary, rector, vicar, or perpetual curate, should become a *successor chargeable* with the payment of his rate-share of any original sum *certified*, before the full expiration of *two* years, reckoning from the day of the death, translation, or removal of his predecessor.

My third objection is, that the three fourths, two-fourths, or one-fourth, are or is to be refunded and paid over, either to him or his representative, within so *short* a period as even *two* years. One may naturally guess, that this circumstance may frequently turn out *inconvenient*, if not *distressing*, to many gentlemen of *small* or no *private* fortunes at all. I purposely omit commenting upon other seeming imperfections or faults in this Irish scheme of remuneration, and hasten to submit my own plan for the *prevention* of dilapidations to the candour of the public.

Now, upon the present occasion, I must beg leave to acquaint the reader, by way of guard against his imbibing or receiving any censorious and malicious slanders or suggestions to my prejudice, that I do not
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mean to intimate the project or contrivance here proposed is the very *best* or *only* proper basis conceivable for an English act of parliament, which would certainly imply the most unpardonable degree of *presumption*. Thus much being premised, in the nature of a *prudent* advertisement, I shall next proceed to state my own scheme for the most effectual *prevention* of dilapidation of church-houses, with all possible brevity and clearness, which is simple, obvious, and uncompounded.

The sum or substance of it, in *miniature*, is as follows : That each or every present or future incumbent, whether archbishop, bishop, dean, dignitary, rector, vicar, or perpetual curate, laying out (under the proper directions of his respective governor, the king, archbishop, or bishop) one, two, three, or four *years* clear income upon his particular preferment, shall, either upon removal or death, instantly become entitled to an annuity of ten, twenty, thirty, or forty *years*, at or after the rate of *ten per cent.* for any given capital so expended in *necessary* improvements.

Exempli gratiâ, let us put this easy or familiar case, of any rector or vicar spending one, two, three, or four hundred pounds upon a small living of one hundred pounds per annum, clear of poor-rates and taxes. Such an improver or expender in melius shall, either by himself or his representative, immediately either upon removal or death, become empowered to demand of the succeeding *occupant* or *occupants* of the aforesaid rectorial or vicarial premises, ten pounds per annum, and so *pro ratâ* parte anni, for the space of *ten* years, in case he has laid out only *one* year's clear income; if he has laid out *two* years profits, then a title to an annuity of the same value for *twenty* years shall accrue; if *three* years income, then an annuity of *thirty* years; and, if *four* years clear profits, then an annuity to be given of *forty* years.

No present or future incumbent, of ever so great a *private* fortune, should be allowed by his superior judge ever to expend *more* than *four* years clear income; nor should any *certificate* be granted by him for
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a *less* sum than *one* whole year's clear profits. Provided the succeeding rector or rectors, vicar or vicars, or their *terre-tenants*, should prove sturdy enough to refuse so just and *equal* a payment, upon a proper demand being made by the respective claimant, then a distress to be forthwith levied or taken upon the premises, (let whoever will be in *possession* at that particular juncture) by virtue of a warrant issued under the seal of the proper governor.

The reader will here please to take notice, that, instead of the *person*, I immediately find or make chargeable the *thing*, whether dignity or benefice, and, in lieu of *lives*, I substitute *years*. My reason or motive for thus innovating upon the Irish scheme is a readier practicability.

This plan will certainly, whenever it meets with the good luck to be put in ure, turn out far less *inconvenient* or *distressing* than that of our sister kingdom.

Numberless persons, who can now with ease pay a moderate *rent* for their present habitations, would soon be put to many

poor or mean shifts and difficulties, were they suddenly to be laid under the hard necessity or compulsion, of purchasing in fee three-fourths, two-fourths, or even one single fourth of their respective landlord's *right* and *title* to their houses, though but for a season, or to serve their present turn. *Large* or *gross* sums of ready money are not usually to be raised without signal inconvenience, upon an unforeseen start of advancement, by a *young* gentleman just after having finished his very expensive education at one of our polite universities, or by a clergyman more advanced in life, and who is probably by this time encumbered with the heavy burthens of a *large* family.

My chief aim or drift is to break, parcel, or subdivide any original sum expended into as many small returns or refundings as possible, for the greater relief and ease of each and every payer. Indeed, it may readily be objected to this most *characteristic* part of my scheme, that the hasty receivers of public bounty would not chuse to obtain it by *scraps*, or in the low way of
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retail as it were, and that disagreeable method accompanied too with such tedious *intervals* of payment. But to this frivolous cavil a truly natural reply as readily offers itself, that humble *petitioners* must not think of being chusers for themselves; our obligation to the *condescending* wisdom of parliament will prove sufficiently strong, in case they will be graciously pleased to lend us their friendly assistance, in any way which to their mature deliberation shall appear most beneficial and convenient. No sort of gratuity or allowance should ever be made on account of only mere *annual* or *necessary* repairs; but whenever any incumbent, high or low, should either *commit* or *suffer* the least destruction or waste of chancels, dwelling-houses, barns, or stables, &c. &c. he should still remain liable to an action, by the *general* custom of the realm, or a suit in the ecclesiastical court, at the *option* of the party injured. It is no part of my desire to wish to see our present *penal* laws, relative to dilapidations, any way softened or relaxed.

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The very much and long wanted alteration in our mere *partial* provision against this notorious *nuisance* is the important *addition* of *bounty* or *reward*. What bitter streams of *otherwise* unnecessary dispute and litigation have flowed from such a palpable *deficiency* in our spiritual constitution, I am sorry to remind the reader ; whereas, had an act of parliament of the sort now recommended, fortunately for the established church, been passed a century or two ago, it seems more than probable, that *few* bad or ruinous ecclesiastical houses would have been found at this day in England. Antidotes or preventives are confessedly the most agreeable as well as least expensive species of physic. I have lately been told by one or two Irish clergymen, that their present public-spirited primate has, for some time past had it in contemplation to procure another *supplemental* bill, which shall *totally* exonerate any improver upon church lands from the loss of a single shilling of the capital which he shall expend in *necessary* buildings, reparations,

tions, *purchases*, or *exchanges*; which *equitable* scheme of his grace's, of *perfect* remuneration, I most heartily adopt or embrace in point of *substance*, but then, at the same time, must solicit licence to dissent as to the present Irish *form* or *mode* of refunding or returning the money to any *benefactor* or expender in melius.

Mortgaging this or that preferment for a proper and suitable term of *years* appears, at first sight, the most likely means to yield seasonable relief or assistance to the *poorer* clergy, whose good, interest, or advantage the writer of this tract wishes, *chiefly* or *principally* to be consulted. *Lives*, we may observe likewise, being commonly of very *unequal* lengths or duration, the respective burthens or charges laid upon the shoulders of many individuals become thereby, of course, as *unequal*.

Now, that every first expender of any given sum, be it either one, two, three, or even four years clear income, ought in conscience to be repaid the *whole* of his said capital by his *successors*, seems clear almost to a demonstration.

Three very evident causes or grounds of this assertion at once present themselves, without much casting about for reasons. The first is the *great trouble* every such builder or repairer must of course be put to, in the proper execution of any improvement; and the second is, that, during all the period the work is in hand, he must be laid under the necessity of *hiring* or paying *rent* for a dwelling.

Another very *moving* circumstance remains, which far outweighs the other two, and that is the imminent hazard which a person frequently runs of his life, in *seasoning* or first inhabiting a new tenement.

After two or three years uninterrupted consideration bestowed upon this subject of dilapidations, accompanied with all possible *candour* and the strictest regard to *truth*, I must ingenuously confess, that the present merely *penal* law of England against these nuisances, or grievances, will for ever continue *one* never-failing source of endless litigation or contention amongst the clergy without a suitable remedy being applied

applied to so crying an evil by the wisdom of our legislature, in *some* way of *pure* prevention. *Eradenda cupidinis pravi sunt elementa*: the very first rudiments or seeds of mischief ought to be cleansed away or destroyed in embryo. All occasions of, and every avenue or access to dispute, amongst *us* in particular, should be cut off as far as possible. *Sublatâ causâ, tolluntur effectus*.

In the mercantile world, we see daily what fresh vigour and spirit is given to any particular branch of trade by a proper *bounty*. Does there arise a scarcity of fish at Billingsgate market? Forthwith my lord mayor, with his furred brethren, assisted by their inferior coadjutors the common-council-men, go into profound or deep speculation upon the *tremendous* causes of the want of such a light diet or favourite delicacy; the hitherto plump citizens already begin to look somewhat thin or meagre at the first apprehension of being debarred or cut off from regaling their appetites upon moderate terms with this sort of dainty. By the alarm sounded

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throughout the whole metropolis, a stranger might apprehend the combined fleets of France and Spain lay anchoring at the very mouth of the Thames ; the wards of Farringdon Within and Without, Mr. and Mrs. Deputy Waddle, are all in arms, for fear---they should not *dine well*. In such a trying conjuncture, therefore, the afore-said senators as *bravely* as *gravely* resolve, without delay, to take up for the *hazardous* service of their bellies, all the fishing smacks and light craft, in order to keep out of the heart of the city that most dreadful enemy, capricious hunger.

A premium is allowed for bringing this sort of provision to market, and a great plenty of it at Billingsgate is the almost immediate consequence of such a reward. The same mode of reasoning readily applies itself, at first sight, with regard to the exportation of *corn* or *grain*.

The reader naturally anticipates the very obvious inference which I am now going to draw from these *ludicrous* premises. If then the *mercantile* world are so *quickly* and *powerfully* influenced in their motions by
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liberality, why would not the *literary* be stirred up to useful actions by the same cause?

Do we mean rudely to insinuate, that *learned* men are far more devoid of common sense than others? Is it to be supposed that the clergy are blinder to their own just interest than the most illiterate? Our enemies, upon every proper occasion, are pleased, and even happy, to represent us in a totally opposite light, as arrant harpies or vultures, always watching for a prey or booty, and as constantly holding ourselves in a posture ready to fly upon the spoil of simple undefigning *lay men*. However, should the legislature soon deign to stoop to the relief of our established church in this important article of dilapidations, by affording all *improvers* suitable encouragement, through the medium of an act of parliament, I am apt to conjecture, that the present generation of clerks would not prove quite so dull of apprehension as some may *censoriously* imagine, but that they would with alacrity lay out their money, for the good both of themselves and posterity, provided they or

their families could be assured of being reimbursed the *whole* capital expended, within any reasonable period of future time. Indeed, whilst things remain in the present *absurd* and *oppressive* situation, I make not the least wonder at the plain reluctance of clergymen against building to so monstrous a disadvantage as that of a single life. Few persons will squander away their substance upon so slight or airy a foundation; for little confidence, according to several reports which I have lately heard, is to be placed in the liberal or unconstrained *gratitude* of an *early* successor. Recent instances can be given of incumbents dying *shortly* after their laying out large sums of money, and their widows or orphans not receiving the smallest *acknowledgement* from the successors. On the contrary, *shameful* examples here and there have been found of the said *successors* insisting upon *satisfaction* for any *frivolous* or *trifling* decay or ruin, which, after long search, they have been enabled to discover, notwithstanding the *vast* expence of their *short-lived* predecessors, bestowed upon the premises. Complaints

plaints of neglect in repairing are frequently the most *clamorous*; when and where the least *just reason* appears for any accusation. And, upon the other hand, it not uncommonly falls out, that, in such cases where incumbents have enjoyed their preferments for *many* years, and *yet* suffered their houses, &c. to become ruinous to an excessive degree, these said incumbents, or their executors, have proved the most backward as to making any tolerably *adequate* satisfaction to their successors for these decays, though, perhaps, at the same time, they are *wealthy*, or in good circumstances.

S E C T. V.

BY way of *illustration* to the foregoing general argument upon the glaring *deficiency* of our *present* law of England, relative to dilapidations, I must beg leave to subjoin here my *own* particular case in *two* instances.

In the year 1760, I was presented, by the dean and chapter of Wells, to a troublesome vicarage of about one hundred and fifty pounds per annum, where I found a most miserable *hovel*. However, my predecessor having died *déplorably* poor, I never demanded one single shilling of the widow and children. Within two years after my first possession of this desirable benefice, I laid out six hundred pounds in *necessary* reparations.

In the year 1766, I was elected canon of the same church, by the same body, where I found myself *thrust* or *forced* into the second *dungeon*, by a most dextrous, spiritual manœuvre. *Antecedently* to every such choice, it is essentially requisite for the candidate to have a house of residence; upon which account, this ecclesiastical corporation have been, time out of mind, vested with a proper number of dwellings in their *own* gift or donation.

The *good old* custom, ancient practice or usage, with regard to the disposal of these houses, we are told, has always been thus

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wisely managed and ordered. Upon any vacancy happening in the chapter, the *senior* members claim a privilege of changing their present habitations for the *better*, according to the rule of precedency.

New collations are accordingly made out at the mere pleasure of an *interested* majority ; so that, of course, the candidate must be *compelled* to accept the very *worst* tenement. Each *junior* canon thus living under a kind of moral certainty, that, ere long, he shall, in like manner, snatch a happy opportunity of *shuffling* himself out of such an undesirable habitation, in the mean time, takes all due care not to be over extravagant in reparations ; if he keeps out only *wind and water*, his credit is saved.

Things going on in this *hopeful* train, for half or a whole century, at length one house at least becomes *internally* quite dilapidated, or a species of *concealed* ruins, and upon whomsoever these fall, him they must effectually crush with a most enormous or unconscionable load of expence, occasioned by the mere *patchings* of his
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predecessors. I myself have proved so unfortunate as to come under this very description, and been driven to lay out, as nearly as possible, the same sum upon my canonical house I did formerly upon my vicarage. By virtue, therefore, of my two promotions, if modern arithmetic speaks truth, I have stood at one hundred pounds per annum *rent* for a dwelling, during these last twelve years.

In conclusion, I shall here shew myself *bold* and *hardy* enough to submit or leave the following query to the perfectly *impartial* judgment of the public: Whether a dean and chapter, being of such an *old* foundation as our's, where the residentiaryships are confessedly *elective*, and proper qualification-houses are vested in the collation of the said corporation, can, consistent with *equity*, or in *foro conscientiae*, change the said qualification-houses in favour, or to please the fancy, of its *senior* members?

Considering the leading circumstances in this case, of the *common right* of all the canons, and their being all exactly, *per legem terræ*, in *pari gradus*, no one being
either

either *greater* or *less* than another; as likewise that each *individual* maintains or repairs his own house, at his own *proper* costs, *separatim*; it plainly follows, that these said canonical houses ought to be and remain fixed to, or unalienable from, certain *particular* stalls in *severalty*, just in the self-same manner, as the *decanal* has, beyond memory, to the *dean's* stall.

This important matter of the *changeableness* or *unchangeableness* of our canonical houses hath been hitherto, *designedly* or *ignorantly*, misrepresented to the public by persons *interested* to deceive. Their *mean*, *illiberal*, and *selfish* method of arguing runs thus:—The *candidate* for a vacant canonry, say they, is put or laid under no *necessity* or *force* to accept the said preferment, if he dislikes the *terms* of his admission. The *rational* or *legal* state of the case is here directly *inverted* or turned upside down; for the single, fair, or just question is, What the *voters* or *electors*, as *guardians* or *trustees* for the *unalienable* patrimony of the church, ought, in duty, to do or execute? Their superior province is *active*, whilst

that of the poor suitor is quite *passive*. The person *designatus*, according to the *justest* notions I have been able to collect, either from law or history, of these matters, appears unquestionably entitled to the whole or entire profits and emoluments of *vacation*, except first-fruits to the crown and other contingent expences, such as rates and taxes, for all which reasonable disbursements a proper allowance is to be made by the successor.

During the *vacancy* of any canonry, all the surviving members of this spiritual corporation aggregate appear to the eye of liberal equity as mere *sequestrators* or *committees* of the preferment in *trust*, for his sole good, interest, security, and advantage, without any *sinister* view of either *fee* or *reward*.

F I N I S.

